UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas Holman
Bankruptcy Judge
Modesto, California

June 17, 2003 at 9:30 a.m.

1.	03-91705-A-7	JIMMY & LISA CARSON	HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTORS AND/OR DEBTORS' ATTORNEY TO FILE SUMMARY, SCHEDULES A-J, STATEMENT OF FINANCIAL AFFAIRS, AND ATTORNEY'S DISCLOSURE OF COMPENSATION 5/16/03 [14]

Tentative Ruling: On April 28, 2003, the debtors filed a chapter 7 petition, and the clerk issued a notice of incomplete filing. On May 16, 2003, the clerk issued the above-entitled Order To Show Cause based on the debtors' failure to file the required the Summary of Schedules, Schedules A-J, the Statement of Financial Affairs and the Attorney Disclosure of Compensation.

The debtors have filed all but the Summary of Schedules. Failure to file a required document is cause to dismiss a case.

This case shall remain pending if the debtors file the missing document on or before June 20, 2003. If they do not, the case will be dismissed without further notice or hearing. No monetary sanctions are imposed.

The court will issue a minute order.

2.	03-90806-A-7	JESUS J. RAMIREZ & SCARLETTE G. ARANDA	CONT. HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTORS TO ATTEND 341 MEETING SCHEDULED FOR 4/17/03 4/25/03 [7]

Tentative Ruling: Jesus Ramirez's case is dismissed; Scarlette Aranda's case shall remain pending. No monetary sanctions are imposed. This matter was continued from May 20, 2003 to allow the debtors an opportunity to speak with the trustee.

On February 28, 2003, the debtors filed a chapter 7 petition. The section 341 meeting was scheduled for April 3, 2003. On April 3, 2003, Mr. Ramirez failed to appear, and the meeting was continued to April 17, 2003. Ms. Aranda appeared. On April 17, both debtors failed to appear, and the meeting was continued to May 1, 2003. The debtors again failed to appear on May 1, 2003, and the trustee continued the meeting to May 29. The debtors failed to attend the May 29, 2003 meeting. Mr. Ramirez's failure to attend four scheduled section 341 meetings is cause to dismiss his case.

The trustee's May 29, 2003 minutes show Ms. Aranda has satisfied all the requirements to keep her case pending.

The court will issue a minute order.

3. 03-91107-A-7 MANUEL INFANTE

HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO ATTEND THE SECTION 341 MEETING ON APRIL 24, 2003
5/12/03 [10]

Disposition Without Oral Argument: The Order to Show Cause is discharged, for the reasons stated below, and no monetary sanctions are imposed.

On March 19, 2003, the debtor filed a chapter 7 petition. The debtor failed to attend the April 24, 2003 scheduled section 341 meeting. As a result, the clerk issued the above-entitled Order To Show Cause, and the trustee rescheduled the meeting to May 22, 2003.

On May 22, 2003, the debtor attended the rescheduled section 341 meeting and the meeting was concluded.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtor has shown cause by attending the rescheduled meeting.

It is further ordered that the last date to object to discharge or the dischargeability of certain kinds of debts is extended to July 22, 2003 The court clerk's office shall provide notice to all creditors of the new date.

The court will issue a minute order.

4. 03-91224-A-7 JACQUELYN MARSHAE HAYES

HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO ATTEND THE SECTION 341 MEETING ON MAY 15, 2003
5/21/03 [13]

Tentative Ruling: This case is dismissed if the debtor did not attend the rescheduled meeting on June 12, 2003, as set forth below. No monetary sanctions are imposed.

On March 25, 2003, the debtor filed a chapter 7 petition. The section 341 meeting was scheduled for May 1, 2003. On May 1, the debtor failed to appear, and the meeting was continued to May 15, 2003. On May 15, the debtor again failed to appear, and the meeting was continued to May 29, 2003. The debtor failed to appear on May 29, and the meeting was continued to June 12, 2003.

As of noon on June 16, 2003, the trustee had not yet filed a report from June 12, 2003.

This case shall remain pending if the debtor attended the rescheduled section 341 meeting on June 12, 2003, unless excused by the trustee. If the debtor failed to attend the rescheduled section 341 meeting without excuse from the trustee, the case shall be dismissed without further notice or hearing.

It is further ordered that the last date to object to discharge or the dischargeability of certain kinds of debts is extended to August 12, 2003. The court clerk's office shall provide notice to all creditors of the new date.

The court will issue a minute order.

5. 01-92828-A-7 DIANE BASE

HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO ATTEND THE SECTION 341 MEETING ON APRIL 24, 2003
5/14/03 [56]

Disposition Without Oral Argument: The Order to Show Cause is discharged, for the reasons stated below, and no monetary sanctions are imposed.

On July 16, 2001, the debtor filed a chapter 13 petition, and the case was converted on March 18, 2003. The debtor failed to attend the April

24, 2003 scheduled section 341 meeting. As a result, the clerk issued the above-entitled Order To Show Cause, and the trustee rescheduled the meeting to May 22, 2003.

On May 22, 2003, the debtor attended the rescheduled section 341 meeting and the meeting was concluded.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtor has shown cause by attending the rescheduled meeting.

It is further ordered that the last date to object to discharge or the dischargeability of certain kinds of debts is extended to July 22, 2003. The court clerk's office shall provide notice to all creditors of the new date.

The court will issue a minute order.

6.	03-91938-A-7	DUSTIN C. ADKINSON	HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO FILE A MASTER ADDRESS LIST 5/21/03 [5]

Tentative Ruling: On May 13, 2003, the debtor filed a chapter 7 petition, and the clerk issued a notice of incomplete filing. On May 21, 2003, the clerk issued the above-entitled Order To Show Cause based on the debtor's failure to file the required Master Address List. The debtor was required to file the Master Address List by May 28, 2003. The debtor has not filed these documents as of June 16, 2003. Failure to file required documents is cause to dismiss a case.

The failure to file a Master Address List is very serious. Until it is filed, no notice of the pendency of the bankruptcy case can be sent. The debtor has been in bankruptcy for more than four weeks, and the process to notify people of it has not even been started.

This case shall remain pending if the debtor files these missing documents on or before June 24, 2003. If he does not, the case will be dismissed without further notice or hearing. No monetary sanctions are imposed.

The court will issue a minute order.

7. 03-91939-A-7 ROBERT & JOCELYN CLARK

HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTORS AND/OR DEBTORS' ATTORNEY TO FILE A MASTER ADDRESS LIST
5/21/03 [4]

Disposition Without Oral Argument: The Order to Show Cause is discharged, for the reasons stated below, and no monetary sanctions are imposed.

On May 13, 2003, the debtors filed a chapter 7 petition, and the clerk issued a notice of incomplete filing. On May 21, 2003, the clerk issued the above-entitled Order To Show Cause based on the debtors' failure to file the Master Address List.

On June 5, 2003, the debtors filed the missing document.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtors have shown cause by filing the missing document.

The court will issue a minute order.

8. 03-91465-A-7 JAMES B. CARABELLO

HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO ATTEND THE SECTION 341 MEETING ON MAY 15, 2003
5/21/03 [6]

Tentative Ruling: The Order to Show Cause is discharged, for the reasons stated below, and no monetary sanctions are imposed.

On April 9, 2003, the debtor filed a chapter 7 petition. The debtor failed to attend the May 15, 2003 scheduled section 341 meeting. As a result, the clerk issued the above-entitled Order To Show Cause, and the trustee rescheduled the meeting to May 29, 2003.

On May 29, 2003, the debtor attended the rescheduled section 341 meeting and the meeting was concluded.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtor has shown cause by attending the rescheduled meeting.

The court will issue a minute order.

9. 03-90867-A-7 FRANCISCO & CANDY RODRIGUEZ HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTORS AND/OR DEBTORS' ATTORNEY TO ATTEND THE SECTION 341 MEETING ON MAY 8, 2003
5/19/03 [11]

Tentative Ruling: This case is dismissed. No monetary sanctions are imposed.

On March 3, 2003, the debtors filed a chapter 7 petition. The section 341 meeting was scheduled for April 10, 2003. On April 10, the debtors failed to appear, and the meeting was continued to May 8, 2003. On May 8, the debtors failed to appear, and the meeting was continued to June 5, 2003. On June 5, 2003, the debtors again failed to appear. Failure to attend three scheduled section 341 meetings is cause to dismiss this case.

The court will issue a minute order.

10. 03-90867-A-7 FRANCISCO & CANDY RODRIGUEZ HEARING ON EX-PARTE MOTION TO EXTEND TIME TO FILE OBJECTION TO DISCHARGE (RULE 4004(B))
MDM #1 5/13/03 [6]

Tentative Ruling: The motion is denied as moot. The court dismissed the case in matter No. 9.

The court will issue a minute order.

11. 01-90276-A-7 IVAN GARCIA HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO ATTEND THE SECTION 341 MEETING ON MAY 8, 2003
5/16/03 [68]

Disposition Without Oral Argument: On January 23, 2001, the debtor filed a chapter 13 petition, and the case was converted to chapter 7 on April 9, 2003. The section 341 meeting was scheduled for May 8, 2003. The debtor did not appear. The meeting was continued to June 5, 2003. On June 5, 2003, the debtor attended the rescheduled section 341 meeting and the meeting was concluded.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtor has shown cause by attending the

rescheduled meeting. No monetary sanctions are imposed.

It is further ordered that the last date to object to discharge or the dischargeability of certain kinds of debts is extended to August 5, 2003. The court clerk's office shall provide notice to all creditors of the new date.

The court will issue a minute order.

12. 03-91480-A-7 MICHAEL WAYNE GIBSON — HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO ATTEND THE SECTION 341 MEETING ON MAY 8, 2003
5/16/03 [16]

Disposition Without Oral Argument: On April 10, 2003, the debtor filed a chapter 7 petition. The section 341 meeting was scheduled for May 8, 2003. The debtor did not appear. The meeting was continued to June 5, 2003. On June 5, 2003, the debtor attended the rescheduled section 341 meeting and the meeting was concluded.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtor has shown cause by attending the rescheduled meeting. No monetary sanctions are imposed.

It is further ordered that the last date to object to discharge or the dischargeability of certain kinds of debts is extended to August 5, 2003. The court clerk's office shall provide notice to all creditors of the new date.

The court will issue a minute order.

13. 03-91486-A-7 DINELIA SOTO — HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO ATTEND THE SECTION 341 MEETING ON
5/16/03 [6]

Tentative Ruling: On April 11, 2003, the debtor filed a chapter 7 petition. The section 341 meeting was scheduled for May 8, 2003. The debtor did not appear. The meeting was continued to June 5, 2003. On June 5, 2003, the debtor attended the rescheduled section 341 meeting and the meeting was concluded.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtor has shown cause by attending the rescheduled meeting. No monetary sanctions are imposed.

It is further ordered that the last date to object to discharge or the dischargeability of certain kinds of debts is extended to August 5, 2003. The court clerk's office shall provide notice to all creditors of the new date.

The court will issue a minute order.

14. 00-93505-A-7 JASPER BRYANT, JR. & ADRIANA BRYANT — HEARING ON DEBTORS' MOTION TO AMEND SCHEDULE "C" 5/14/03 [14]
FW #2

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted and debtors are authorized to amend their Schedule C (Property Claimed As Exempt). Pursuant to Fed. R. Bankr. P. 4003(b), parties in interest shall have thirty (30) days from entry of the order on this motion to object to debtors' claims of exemption in the amended Schedule C.

Counsel for debtors shall submit an order that conforms to the court's ruling. Pursuant to Fed. R. Bankr. P. 1009(a), a copy of the order shall be served on all parties in interest.

15. 02-94714-A-13 NATALIE PEARSE — HEARING ON MOTION FOR APPROVAL OF COMPROMISE [RULE 9019] 5/15/03 [36]
FW #3

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

This motion fails to comply with LBR 9014-1(d)(5). Debtor/movant has failed to address or even mention the relevant legal authorities governing approval of compromises in the Ninth Circuit. *See inter alia*, In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). Not surprisingly, therefore, debtor/movant has failed to explain why the proposed compromise is supported by the factors enumerated in those authorities.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

The court notes parenthetically that paragraph 3 of the Stipulation For Entry Of Judgment attached to the motion makes no sense.

The court will issue a minute order.

16. 02-94714-A-13 NATALIE PEARSE
03-9002 FW #4

HEARING ON MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS
5/15/03 [48]

Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Nevertheless, in this instance the court issues a tentative ruling.

This motion fails to comply with LBR 9014-1(d)(5). Debtor/movant has failed to specify any authority for the requested relief. This motion is entitled "Motion For Approval Of Attorneys' Fees And Costs," but the text of the motion states that the debtor "moves the Court for an order allowing defendant, Tracy Federal Credit Union, to reimburse debtors' attorney its fees of $5,760 and costs of $285.86 incurred in connection with the adversary complaint 03-9002..." Thus, the court cannot determine whether this motion seeks a court determination of the reasonableness of the stated fees and costs or rather seeks court authority for Tracy Federal Credit Union to pay the stated amounts pursuant to an agreement. In light of Matter No. 15, the court presumes the motion seeks the latter. If that is the case, movant has not explained why this motion is necessary in addition to the motion at Matter No. 15. If it is deemed necessary because of the last paragraph of the Rights And Responsibilities Of Chapter 13 Debtors And Their Attorneys signed by the debtor and her counsel and filed December 19, 2002, then that should have been explained in the motion. Furthermore, if that is the reason, this motion is not a motion in the adversary proceeding, it is a motion in the Chapter 13 case, and it should not be on this calendar at all. Counsel should not attempt to "hide the ball" and make the court guess as to the perceived need for court approval.

In any event, the court has denied without prejudice approval of the compromise at Matter No. 15 above. This motion, to the extent that it is not redundant, is therefore premature. Because this motion fails to comply with LBR 9014-1(d)(5) and is premature, it is also denied without prejudice. No monetary sanctions are imposed.

Applicant shall submit an order that conforms to the court's ruling.

17. 99-93021-A-7 CFANE KINDLE, INC.
ASG #6

HEARING ON MOTION FOR APPROVAL OF INTERIM DISTRIBUTION
5/8/03 [70]

Tentative Ruling: As an initial matter, the objections of Montpelier Nut Company, Inc., and Western Nut Company (collectively, "Objectors") are stricken. Objectors are corporations, and the objections are presented by two non-lawyers. Corporations can only appear in this court through licensed attorneys; an officer cannot represent the corporation. Rowland v. California Men's Colony, 506 U.S. 194 (1993); United States v. High Country Broadcasting Co., Inc., 3 F.3d 1244 (9th Cir. 1993); Local Bankruptcy Rule 1001-1(c), incorporating Local District Rule 83-183(a).

The only two objections to the motion having been stricken, the motion is granted. The failure of any other party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1).

The trustee seeks to issue an interim distribution to creditors in this chapter 7 case. Federal Rule of Bankruptcy Procedure 3009 states that dividends to creditors in Chapter 7 shall be paid as promptly as practical. "Rule 3009 contemplates that there may be multiple dividends during a chapter 7 case." 9 Lawrence P. King, et al., Collier on Bankruptcy, ¶ 3009.01 (15th rev. ed. 2003). Therefore, the motion is granted and the interim distribution is approved.

The court notes that the stricken objections allege, without any evidentiary support, that a creditor, California Nut Company, has received payments not reflected in its claim. Objectors thus allege that California Nut Company's claim is overstated. Objectors are free to object to California Nut Company's claim. Until an objection is filed, the California Nut Company's claim is deemed allowed. 11 U.S.C. § 502(a).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

18.	02-91826-A-11 SSA #4	CALIFORNIA TECHNICAL EDUCATION FRESNO	HEARING ON APPLICATION FOR APPROVAL OF COMPROMISE [BR 9019] 5/16/03 [162]

Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Nevertheless, in this instance the court issues a tentative ruling

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from a dispute between CSK Auto, Inc.,

aka Kragen Auto Parts ("CSK") and the chapter 11 estates of California Technical Education Fresno (02-91826); Modesto Technical College, Inc. (02-92052); and California Technical College Systems, inc. (02-91650). CSK has filed multiple claims in all three cases based on the uncertainty on the corporate structure of the three and on uncertainty as to which debtor possesses its collateral. The claims arise from pre-petition purchases by the debtor of automotive repair equipment. CSK allegedly holds a perfected security interest in the collateral. The parties now acknowledge that California Technical Education Fresno is in possession of and using the majority of CSK's collateral.

In this case, CSK has filed five claims. Two claims (Claim No. 1 and Claim No. 2) are filed as secured claims in the amounts of $21,207.56 and $15,464.60. The total of CSK's filed secured claims is thus $36,672.16. Neither Claim No. 1 nor Claim No. 2 attaches a copy of any security agreement or evidence of perfection of any security interest, as required by Bankruptcy Rule 3001(c) and (d). Three of CSK's claims (Claim No. 3, Claim No. 4 and Claim No. 5) are filed as unsecured in the amounts of $3,971.24, $7,054.21 and $38.43. The total of CSK's filed unsecured claims is thus $11,063.88. CSK's secured and unsecured claims total $47,736.04.

The parties have entered into an agreement under which CSK's claim will be fixed at $44,736.04 and a note to that effect (with no interest) will be executed. The claim will be allowed in this case only, and the proofs of claim in the other cases will be withdrawn. The agreement requires this estate to begin making monthly payments of $1,242.66 for 35 months and a final payment in month 36 of $1,243.04. Finally, the Fresno estate will execute a new UCC-1 financing statement to protect CSK's security interest in the collateral. As noted above, no opposition to the compromise has been presented.

No evidence has been presented to show that CSK holds any secured claim. None is attached to the CSK proofs of claim, and none is attached to the motion. While a properly completed and filed proof of claim constitutes prima facie evidence of the validity and amount of the claim [Bankruptcy Rule 3001(f)], neither of CSK's claims filed as secured is properly completed where it fails to attach evidence of a security agreement and evidence of perfection of the claimed security interest. Thus, CSK's filed secured claims do not support a finding that CSK holds any security interest. If CSK holds no security interest, there is absolutely no justification for elevating its status from unsecured to secured. Among other things, doing so would constitute an impermissible alteration of the priorities of distribution set forth in the Bankruptcy Code. Even if CSK did hold a security interest, there is absolutely no justification for proposing to grant it a secured claim of $44,736.04 when it has only filed secured claims totaling $36,672.16. Elevating $8,063.88 from unsecured to secured status suffers from the same problems stated above.

In addition, the trustee in substance seeks to "term out" CSK alleged secured claim and begin making payments on it immediately. It is generally improper to pay pre-filing claims, even secured claims, in a Chapter 11 case prior to confirmation of a plan. In re Air Beds, Inc., 92 B.R. 419, 422 (9th Cir. B.A.P. 1988)("The general rule is that a distribution on pre-petition debt in a Chapter 11 case should not take place except pursuant to a confirmed plan of reorganization, absent extraordinary circumstances."). This principle is embodied in FRBP 3021 which states: "after a plan has been confirmed, distribution shall be

made to creditors whose claims have been allowed." It is recognized by the United States Supreme Court in United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 370, 108 S. Ct. 626, 98 L.Ed.2d 740, 748 (1988)("It is common ground that the 'interest in property' referred to by § 362(d)(1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the stay.") and by the Ninth Circuit Court of Appeals in In re B & W Enterprises, Inc., 713 F.2d 534, 537 (9th Cir. 1983)(neither the "Six Months Rule" - codified at 11 U.S.C. § 1171(b) - nor the "Necessity of Payment Rule" applies outside the context of railroad reorganizations because it is "unwise to tamper with the statutory priority scheme devised by Congress"). In this case, there is no showing by the trustee of circumstances so extraordinary that they justify the pre-confirmation payment of pre-petition debt. Similarly, there is no showing by the trustee that CSK's collateral, if any, is depreciating such that adequate protection payments equal to the amount of that depreciation might be appropriate under Timbers.

For the foregoing reasons, the motion is denied.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

19.	02-92434-A-11 UST #1	RELIABLE COMMUNICATIONS, INC.	CONT. HEARING ON THE UNITED STATES TRUSTEE'S MOTION TO CONVERT OR DISMISS CHAPTER 11 CASE PURSUANT TO 11 U.S.C. SECTION 1112(B) 4/16/03 [98]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted for cause to the following extent: this case is converted to chapter 7. The United States trustee ("UST") filed this motion alleging cause in debtor's inability to effectuate a plan of reorganization and debtor's failure to file a plan or disclosure statement within the time set by the court. Pursuant to 11 U.S.C. § 1112(b), the court "after notice and a hearing...may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of the creditors and the estate, for cause, including...(2) inability to effectuate a plan; (3) unreasonable delay that is prejudicial to creditors; [and] (4) failure to propose a plan under section 1121 of this title within any time fixed by the court...." (West 2003).

Debtor filed this case on July 2, 2002. Following a status hearing held September 4, 2002, the court issued an order requiring the debtor in possession ("DIP") to file a plan and disclosure statement on or before November 4, 2002. The DIP did not. Instead the DIP filed an ex parte

application to extend the time to file its plan to December 4, 2002, but the DIP never submitted an order on that application. Thus the November 4, 2002 date was never altered. The filing of the application on November 4, 2002, made the application itself timely but did nothing to extend the deadline. On June 16, 2003, the day before the hearing on this motion and more than seven months after the deadline set in the court's September 5, 2002 order (more than six months after the extended deadline sought but never obtained by the debtor), the DIP filed a plan and a disclosure statement in this case. The court finds cause in the DIP's failure to file a plan within the time fixed by the court [11 U.S.C. §§ 1112(b)(4)] and unreasonable delay by the DIP that is prejudicial to creditors [11 U.S.C. §§ 1112(b)(3)]. The DIP's conscious decision to ignore the court's order in the hopes that the telecommunications industry would rebound does not excuse the DIP's behavior.

Furthermore, for the reasons set forth in the UST motion and the Declaration of Lisa M. Grootendorst, the court finds that the DIP is suffering continuing loss to or diminution of the estate and has no reasonable likelihood of reorganization [11 U.S.C. § 1112(b)(1)] and is unable to effectuate a plan [11 U.S.C. § 1112(b)(2)]. The UST has provided evidence that the estate has decreased in value $100,452 since filing. The DIP has seen decreases in its accounts receivable and inventory and an increase in its accounts payable. The DIP stated in its August 27, 2002 status hearing statement that it intended to propose a plan of reorganization funded through the DIP's ongoing business operations. The UST's analysis shows that the debtor has no ability to fund a plan in such manner. The DIP's opposition to this motion states that the plan they intended to file would be funded through an infusion of cash from the principals of the debtor, the Henkles. The DIP's argument is unpersuasive. The evidentiary record on this motion closed with the expiration of the time to file a reply. Local Bankruptcy Rule 9014-1(f)(1)(iii). Thus, there is no evidence in the record that Robert Henkel, the debtor's president, has the ability to borrow $100,000 to fund a plan.

Finally, the court finds cause in the DIP's violation of Local Bankruptcy Rule 2016-1(a), consisting of the DIP's continued payment of Robert Henkles' salary despite the expiration on March 12, 2003 of this court's authorization to make such payments. There is evidence in the March 2003, April 2003, and May 2003 operating reports, and the court finds, that Mr. Henkles has received payments of his salary at least six times in a gross amount of $1,615.38 since authority for such payments ended. The MOR's include payroll reports dated March 20, 2003; April 2, 2003; April 17, 2003; May 1, 2003, May 15, 2003; and May 29, 2003.

Having found cause as set forth above, the court must determine whether dismissal or conversion to chapter 7 is in the best interest of creditors and the estate. The court finds that conversion is in the best interest of creditors. Based on the balance sheet attached to the most recent monthly operating report, it is clear that the estate has assets well in excess of the secured debt owed to Central Sierra Bank. Furthermore, debtor schedules no priority debt and no priority claims have been filed. It is likely that general unsecured creditors will receive a dividend in the liquidation of this estate.

Counsel for the U.S. trustee shall submit an order that conforms to the court's ruling.

20.	01-92638-A-11 RGH #13	MCCALIF GROWER SUPPLIES, INC.	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM #113 OF WELLS FARGO FINANCIAL LEASING 5/2/03 [363]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1)(i). Therefore, the objection to claim No. 113 in the court's claims register, filed by Wells Fargo Financial Leasing, ("Claim") is resolved without oral argument.

The objection is sustained. The reorganized debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. The claim itself states debtor was current when the bankruptcy case was filed. The subject lease was assumed and assigned as part of a sale approved by the court on December 11, 2001. As part of the assumption, debtor claimed the lease payments were current. Creditor did not object to that characterization. After the assignment, debtor has no further liability on the subject lease. 11 U.S.C. § 365(k). Creditor has not opposed this objection to claim. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the reorganized debtor between filing and assumption/assignment.

Counsel for the reorganized debtor shall submit an order that conforms to the court's ruling.

21.	01-92638-A-11 RGH #14	MCCALIF GROWER SUPPLIES, INC.	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM #122 OF SERVCO PACIFIC INC. 5/2/03 [366]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1)(i). Therefore, the objection to claim No. 122 in the court's claims register, filed by Servco Pacific, Inc., ("Claim") is resolved without oral argument.

The objection is sustained. The reorganized debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Debtor correctly points out that creditor has filed a subsequent claim (#152) that supercedes the Claim. Creditor did not properly fill out the subsequent claim form so as to designate it as amending claim # 122. Accordingly, the objection

is sustained and the Claim is disallowed in its entirety.

Counsel for the reorganized debtor shall submit an order that conforms to the court's ruling.

22.	01-92638-A-11 RGH #16	MCCALIF GROWER SUPPLIES, INC.	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM #135 OF BANK OF AMERICA 5/2/03 [369]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1)(i). Therefore, the objection to claim No. 135 in the court's claims register, filed by Bank of America, ("Claim") is resolved without oral argument.

The objection is sustained. The claim was not timely filed. Bank of America's debt was not scheduled by the debtor. Therefore, pursuant to Fed.R.Bankr.P. 3003(c)(2), Bank of America was required to file a proof of claim. The last date to file a claim was November 5, 2001, and to file a government claim was December 24, 2001. Bank of America filed its claim for $5,549.99 on November 13, 2001. Bank of America did not seek to extend the time for it to file its claim under Fed.R.Bankr.P. 3003(c)(3) and has not opposed this objection to claim.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3003(c), the claim is disallowed. Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3rd Cir. 1995) *distinguished on other grounds* In re Maya Const. Co., 78 F.3d 1395, 1400 (9th Cir. 1996).

Counsel for the reorganized debtor shall submit an order that conforms to the court's ruling.

23.	01-92638-A-11 RGH #17	MCCALIF GROWER SUPPLIES, INC.	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM #139 OF MARYLAND CASUALTY COMPANY 5/2/03 [372]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1)(i). Therefore, the objection to claim No. 139 in the court's claims register, filed by Maryland Casualty Company, ("Claim") is resolved without oral argument.

The objection is sustained. The claim was not timely filed. Maryland Casualty Company's debt was not scheduled by the debtor. Therefore, pursuant to Fed.R.Bankr.P. 3003(c)(2), Maryland Casualty Company was required to file a proof of claim. The last date to file a claim was November 5, 2001, and to file a government claim was December 24, 2001. Maryland Casualty Company filed its claim for $1,632.00 on November 27, 2001. Maryland Casualty Company did not seek to extend the time for it to file its claim under Fed.R.Bankr.P. 3003(c)(3) and has not opposed

this objection to claim.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3003(c), the claim is disallowed. Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3rd Cir. 1995) *distinguished on other grounds* In re Maya Const. Co., 78 F.3d 1395, 1400 (9th Cir. 1996).

Counsel for the reorganized debtor shall submit an order that conforms to the court's ruling.

24.	01-92638-A-11 RGH #18	MCCALIF GROWER SUPPLIES, INC.	HEARING ON OBJECTION TO SCHEDULED SUM OF B&G DISTRIBUTOR 5/2/03 [375]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1)(i). Therefore, the objection to the scheduled sum of B&G Distributor is resolved without oral argument.

The objection to scheduled sum is sustained. The reorganized debtor confirmed a plan on June 25, 2002. In the order confirming plan, debtor retained authority to "object to any and all claims, whether filed or scheduled...." In this instance, the debtor objects to a sum that the debtor itself scheduled. Debtor alleges that it included the claim of B&G Distributor for $6,055.00 twice in Schedule F. It objects to the second scheduled claim (the "Claim") as a duplicate of the first. The debtor's schedules are prima facie evidence of the validity and amount of the claims listed therein unless they are specifically provided for as contingent, disputed or unliquidated [Rule 3003(b)]. However, when a subsequent objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the schedules, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the reorganized debtor.

Counsel for the reorganized debtor shall submit an order that conforms to the court's ruling.

25.	01-92638-A-11 RGH #19	MCCALIF GROWER SUPPLIES, INC.	HEARING ON OBJECTION TO ALLOWANCE OF SCHEDULED SUM OF BAMBOO DEPOT 5/2/03 [378]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1)(i). Therefore, the objection to the scheduled sum of Bamboo Depot is resolved without oral argument.

The objection to scheduled sum is sustained. The reorganized debtor confirmed a plan on June 25, 2002. In the order confirming plan, debtor

retained authority to "object to any and all claims, whether filed or scheduled...." In this instance, the debtor objects to a sum that the debtor itself scheduled. Debtor alleges that it included the claim of Bamboo Depot for $181.50 twice in Schedule F. It objects to the second scheduled claim (the "Claim") as a duplicate of the first. The debtor's schedules are prima facie evidence of the validity and amount of the claims listed therein unless they are specifically provided for as contingent, disputed or unliquidated [Rule 3003(b)]. However, when a subsequent objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the schedules, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the reorganized debtor.

Counsel for the reorganized debtor shall submit an order that conforms to the court's ruling.

26.	01-92638-A-11 RGH #23	MCCALIF GROWER SUPPLIES, INC.	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM #36 OF GMAC 5/2/03 [381]

Tentative Ruling: The failure of a creditor to file written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1)(i). Nevertheless, the court issues a tentative ruling in this matter.

The objection to claim No. 36 in the court's claims register, filed by General Motors Acceptance Corp., ("Claim") is sustained in part and overruled in part. The reorganized debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

As to the amount of pre-petition arrears stated in the claim, $817.55, the reorganized debtor has provided no evidence to rebut the prima facie evidence of the proof of claim. The objection only states "the debtor made each and every post-petition payment owed under the lease through its termination." (Emphasis added). Although the debtor scheduled an identical amount in its Schedule F, the filed claim superseded the scheduled amount. Bankruptcy Rule 3003(c)(4). Therefore, the objection to the pre-petition arrears portion of the Claim is overruled.

As to the secured status of the claim, the objection is sustained. This was a leased vehicle; it always belonged to the lessor. There has been no determination that the lease was a disguised security device. Therefore, the lessor never held a security interest. In any event, the vehicle has been returned to the lessor. The creditor has failed to carry its burden to prove that the Claim is secured, and the objection to the secured status of the Claim is sustained.

As to the remainder of the Claim, the objection is sustained. The

creditor's claim includes an amount provided in the lease agreement for a purchase option. The lessee could agree to purchase the vehicle at the end of the lease for $17,563.90. The debtor did not exercise this option; instead choosing to return the vehicle. The debtor further argues that it made all post-petition payments required under the lease until it was terminated. The creditor has failed to rebut debtor's evidence and thus has failed to carry its burden.

Accordingly, the objection is sustained in part and overruled in part and the Claim is disallowed as a secured claim and allowed as a general unsecured claim in the amount of $817.55, except to the extent already paid by the reorganized debtor between filing of this bankruptcy case and termination of the lease.

Counsel for the reorganized debtor shall submit an order that conforms to the court's ruling.

27.	02-91650-A-11 SSA #4	CALIFORNIA TECHNICAL COLLEGE SYSTEMS	HEARING ON APPLICATION FOR APPROVAL OF COMPROMISE [BR 9019] 5/16/03 [207]

Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Nevertheless, in this instance the court issues a tentative ruling

The motion is denied. The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Those factors a court considers in its analysis include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved. Id.

The compromise in question arises from a dispute between Carlson Investments ("Carlson") and the chapter 11 estates of California Technical Education Fresno (02-91826); Modesto Technical College, Inc. (02-92052); and California Technical College Systems, inc. (02-91650). Carlson has filed multiple claims in all three cases based on the uncertainty on the corporate structure of the three and on uncertainty as to which debtor is liable under the lease agreement. The claims arise from debtor's lease of non-residential real property in Fresno,

California from Carlson. According to the proof of claim filed in this case, debtor(s) owed $14,143.42 on the date of filing. The lease by its terms expired November 30, 2002.

The trustee and Carlson propose to compromise this matter through this estate paying Carlson's claim in the amount of $16,453.69. Carlson will withdraw its claims in the two companion cases. Payment of the "compromised amount" is scheduled to begin ten days after the compromise is approved but the agreement provides no schedule for payments to be made.

It is generally improper to pay pre-filing claims, even secured claims, in a Chapter 11 case prior to confirmation of a plan. In re Air Beds, Inc., 92 B.R. 419, 422 (9th Cir. B.A.P. 1988)("The general rule is that a distribution on pre-petition debt in a Chapter 11 case should not take place except pursuant to a confirmed plan of reorganization, absent extraordinary circumstances."). This principle is embodied in FRBP 3021 which states: "after a plan has been confirmed, distribution shall be made to creditors whose claims have been allowed." It is recognized by the United States Supreme Court in United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 370, 108 S. Ct. 626, 98 L.Ed.2d 740, 748 (1988)("It is common ground that the 'interest in property' referred to by § 362(d)(1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the stay.") and by the Ninth Circuit Court of Appeals in In re B & W Enterprises, Inc., 713 F.2d 534, 537 (9th Cir. 1983)(neither the "Six Months Rule" - codified at 11 U.S.C. § 1171(b) - nor the "Necessity of Payment Rule" applies outside the context of railroad reorganizations because it is "unwise to tamper with the statutory priority scheme devised by Congress"). In this case, there is no showing by the trustee of circumstances so extraordinary that they justify the pre-confirmation payment of pre-petition debt.

The court can order payment of pre-filing lease arrears in the context of a cure when a trustee seeks to assume an unexpired lease. 11 U.S.C. § 365(b). No such motion is properly before this court. The then debtor in possession's motion to assume this lease was dropped from calendar on August 28, 2002. As noted above, since that time, the lease in this case has expired. The parties have provided no authority for this estate to cure an expired lease. Nor is the court aware of any such authority.

At most, the trustee's argument is that the payment must be made under the "Necessity of Payment Rule," which "may be invoked by trustees as justification for the payment of pre-petition debts paid under duress to secure continued supplies and services essential to the continued operation of the railroad." B & W Enterprises, 713 F.2d at 537. However, as stated above, B & W Enterprises held that the "Necessity of Payment Rule," if it applies at all under the Bankruptcy Code, does not apply outside the context of railroad reorganizations.

The court notes that, subject to approval of the above payment, the parties have agreed to enter into a new lease "thirty days after the effective date of the order confirming plan...." When this would actually occur is unclear because no plan or disclosure statement is currently before the court. The initial disclosure statement was denied approval on April 17, 2003 as containing inadequate information. It had

been filed prior to the appointment of the chapter 11 trustee in this case. Furthermore, no showing has been made that the terms of any new lease would be reasonable or that they would be approved by the court. Accordingly, Carlson's "obligation" to enter into a new lease under the compromise may in fact be illusory.

For the above reasons, approval of the compromise is denied.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

28. 01-91256-A-7 EUGENE L. CONTI, SR.
02-9109 HM #2
MICHAEL D. MCGRANAHAN VS.

JOSEPHINE M. CONTI FAMILY, ET AL.

HEARING ON MOTION FOR CONTINUANCE OF SCHEDULING ORDER (OST) 5/27/03 [18]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

29. 03-90367-A-7 EFRAIN & ROCIO ESTRADA
UST #1

CONT. HEARING ON THE UNITED STATES TRUSTEE'S MOTION TO DISMISS CHAPTER 7 CASE PURSUANT TO 11 U.S.C. SECTION 707(B) 4/7/03 [8]

Tentative Ruling: This matter continued from May 6, 2003, at the request of the parties so that Ronald Holmes could substitute in as debtors' counsel and file opposition on their behalf. Mr. Holmes did both on May 29, 2003. The debtors had also filed amended Schedules I and J in response to this motion and the continuance gave the United States trustee ("UST") an opportunity to respond. The UST did so timely.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted. The debtors filed this voluntary chapter 7 petition on January 30, 2003. The overwhelming majority of the debtors' $68,532 in unsecured debt is from credit card purchases. The schedule F shows the credit card purchases are mostly for miscellaneous personal property. The debtors also scheduled secured debt on their residence and in two vehicles. The debtors did not schedule any priority debt. On April 7, 2003, the UST timely moved to dismiss this case for substantial abuse pursuant to § 11 U.S.C. § 707(b).

For the court to dismiss a case pursuant to § 11 U.S.C. § 707(b), it must determine (1) that the debtors owe primarily consumer debt, and (2) that

granting the debtors a discharge would be a substantial abuse of chapter 7. In re Gaskins, 85 B.R. 846, 847 (Bankr. C.D. Cal. 1988)(*citing* Zolg v. Kelly (In re Kelly), 841 F.2d 908 (9th Cir. 1988)).

Consumer debt is defined by 11 U.S.C. § 101(7) as "debt incurred by an individual primarily for a personal, family, or household purpose." In re Kelly, 841 F.2d. at 912. Here, the evidence shows the debtors' unsecured debt is almost exclusively credit card debt. The schedules show the debt was incurred for household purchases, such as obtaining miscellaneous personal property, a residence and multiple vehicles. The court finds that debtor's debts are consumer debts.

To determine if there is "substantial abuse" sufficient to dismiss the case, the primary factor to be considered is whether the debtors have the ability to pay their debts when due. In re Kelly, 841 F.2d at 914. To determine if the debtors have that ability, courts have looked to see if the debtors are able to fund a chapter 13 plan. Id. Based on the evidence now before this court, the court finds the debtors have such an ability, with appropriate adjustments to their monthly income and expenses.

The UST correctly argues that the debtors' income calculation should be adjusted. Debtors' amended Schedule I eliminated the deduction for a 401k contribution but failed to adjust downward debtors' over-withholding for income taxes. The court agrees that it is improper for the debtors to reduce their net income, through over-withholding for income taxes, by approximately $8,000 to $9,000 per year and yet seek to discharge over $68,000 in unsecured debt. Accordingly, for the purposes of this motion, the court accepts the UST's estimation of a proposed change in the debtors' income tax withholding of $675 per month. Thus, the debtors' monthly net income increases from $4,379.49 to $5,054.49 per month.

The UST also correctly argues that the debtors' expenses on their amended schedule J should be adjusted. First, the UST argues that Mrs Estrada's mother and two sisters as well as Mr. Estrada's grandfather in Mexico are not dependents of the debtors and expenses attributed to them should be disallowed in their entirety. The court agrees. Mrs. Estrada's mother is apparently able bodied as debtors' opposition states she works seasonally at a cannery. Debtors have no legal obligation to support Mrs. Estrada's siblings at all. Finally, there is no legal obligation to support a relative living in another country. While the court understands that debtors may feel a moral responsibility to support their family members, "an obligation to care for a family member who is not a dependent does not take precedence over a legal obligation to repay a creditor." In re Cox, 249 B.R. 29, 32 (Bankr. N.D. Fla. 2000). Expenses attributable to these four individuals total $550.00 per month and are disallowed.

Second, debtors schedule $510 per month for eating out in addition to their food budget. This includes breakfast and lunch for debtors and one child and lunch for the second child. Debtors argue in their declaration that they don't have time to make lunches for themselves or their children because they leave for work at 4:30 a.m. and return at 8:00 p.m. The court is unaware of any convenience exception to the bankruptcy code. This expense is also disallowed.

Third, the debtors propose to set aside an additional $164.00 per month to fund the purchase of a new vehicle. There is no allegation that their

current vehicle doesn't work. In addition, the debtors schedule two other vehicles although debtors propose to surrender the Toyota truck. The expense does not appear on the amended Schedule J. It appears only in the opposition as a proposed future expense. Because debtors' vehicle is currently in working order, the expense is disallowed.

Fourth, the trustee argues that various expenses that appeared for the first time or increased on the amended Schedule J solely in response to the trustee's motion should be disallowed in this analysis. Telephone increased $50; laundry increased $10; charity increased $10; ADT is a new expense at $36; home maintenance increased $50; day care expenses increased $10. The debtors' argue in their opposition that the petition preparer did not explain to them the need to be accurate with their expenses. This argument is wholly unpersuasive because the documents are signed under penalty of perjury and the preparer is precluded from instructing debtors on how to fill out their schedules because that would be providing legal advice. Furthermore, "a telling sign and a red flag indicating bad faith is an inflated budget, especially an amended budget after the Debtor's right to remain in Chapter 7 is challenged." In re Weber, 208 B.R. 575, 577 (Bankr. M.D. Fla. 1997). The court will allow the charity increase because charitable contributions are presumptively included in the disposable income calculation under 11 U.S.C. §1325(b)(2)(A) up to 15% of gross income and debtors' contributions only total 2%. Except for the charitable contribution, the foregoing new or increased expenses are disallowed for the analysis of this motion.

These adjustments result in an adjusted monthly expenses total of $4,226.00.

After the above reductions and eliminations, the debtors' disposable income is $828.49 per month. Under a standard 36 month chapter 13 plan, that disposable income would result in plan payments totaling $29,825.64. After deducting a $2,000 attorney fee and 8% trustee fee, the debtors could pay an approximate 37% dividend on unsecured claims. While that dividend is less than the 43% previously found abusive by the Ninth Circuit Bankruptcy Appellate panel, see In re Gomes, 220 B.R. 84, 88 (9th Cir. BAP 1998), the court finds that it constitutes substantial abuse in this case. That 37% dividend allows debtors to pay back $25,440 out of $68,532 in general unsecured debt. That is "no small sum." Id. Accordingly, dismissal under 11 U.S.C. § 707(b) is warranted.

For the foregoing reasons, the UST's motion is granted. On or before June 27, 2003, the debtors may voluntarily convert this case to one under Chapter 13. If they do not, the case will be dismissed pursuant to 11 U.S.C. § 707(b) without further notice or hearing.

Counsel for the U.S. Trustee shall submit an order that conforms to the court's ruling.

30. 00-90071-A-7 NAVEED ASGHAR
RLF #1

HEARING ON MOTION FOR APPROVAL OF ADMINISTRATIVE CLAIM OF GOODGUYS TIRE CENTERS
5/12/03 [166]

Tentative Ruling: This motion does not comply with the Local Bankruptcy

Rules ("LBR"). Movant cites a LBR which has no application here (LBR 3007-1(d)(i)). That Rule deals with objections to claims. This is a motion for approval of an administrative claim which must be filed under LBR 9014-1(f). Movant did provide sufficient notice of the motion. Furthermore, the Notice of Hearing does not comply with LBR 9014-1(d)(3) where it fails to state on whom or where opposition should be served.

However, because movant appears in this court infrequently at best and because the parties appear to have come to an agreement on this motion, the court treats this motion as having been filed under LBR 9014-1(f)(2). No monetary sanctions are imposed. But see LBR 9014-1(l). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

31. 94-94171-A-7 ALBERT GARLAND
95-9018 MAL #7
ESTATE OF MERRILL J. MALONEY
BY SHARON R. MALONEY VS.

HEARING ON PLAINTIFFS/ JUDGMENT CREDITORS' RENEWED MOTION FOR FOURTH AWARD OF COSTS AFTER JUDGMENT
5/1/03 [268]

Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). In this instance, however, the court issues a tentative ruling.

The plaintiffs' Motion for Fourth Award of Costs After Judgment is granted in part and denied in part and costs of $908.50 are awarded. The procedure to collect a money judgment and proceedings supplementary to and in aid of collection are in accordance with the practice and procedure of the state in which the district court is located. Fed. R. Civ. P. 69, made applicable to this proceeding by Fed. R. Bankr. P. 7069.

The plaintiffs seek reimbursement of costs in the amount of $1,258.50 for executing subpoenas, monitoring related cases, executing service of process, procuring transcripts, working with experts in property transfers and investigators, and more.

The plaintiffs may be reimbursed as a matter of right for costs incurred in the creation and procurement of transcripts, service of process, and appearance fees. See, Cal. Code of Civ. Proc. §§ 685.070 & §§ 708.010-709.030. Also see, Ahart, Enforcing Judgment and Debts, §§ 6.34-6.38 (1998).

The movant may be reimbursed at the discretion of the court for searches and subpoenas and copying expenses. See, Cal Civ. Pro. Code § 685.040 & § 685.080(f). Also see, Ahart, Enforcing Judgment and Debts, §§ 6.39 (1998). The above requests total $908.50 and court finds the plaintiffs' costs are reasonable and necessary, especially when considered in light of the amount of judgment and the litigation history between the parties.

However, the court does not approve as a cost of collection, reimbursement of Plaintiff's attorney's Nevada state bar dues. The stated reason for the request is that they are necessary so that attorney Pagano may continue to represent plaintiff in Nevada courts. The court does not consider this a cost of collection. The court considers it,

like Mr. Pagano's California state bar dues, reimbursable as part of the hourly rate charged to all his clients. Thus, it is a component of attorneys' fees. Attorneys' fees are not collectable as post-judgment costs under Cal. Code of Civ. Proc. § 685.070(a)(6) unless they are allowable under Code of Civ. Proc. § 685.040. Code of Civ. Proc. § 685.040 allows attorneys fees to be included as costs only if they were awarded in the underlying judgment pursuant to Code of Civ. Proc. § 1033.5(a)(10)(A). The underlying judgment in this case, entered May 26, 1995, did not award attorneys fees. Therefore, the $350 request for Nevada state bar dues is denied.

Counsel for the plaintiff shall submit an order that conforms to the court's ruling.

32. 03-90879-A-7 KENNETH & DENISE POMBO — HEARING ON APPLICATION FOR AUTHORIZATION TO SELL FARM EQUIPMENT FREE AND CLEAR OF LIENS OF U.S. BANK NATIONAL ASSOCIATION 5/13/03 [25]
SF #2

Tentative Ruling: The failure of any party in interest to file written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Nevertheless, because other parties may be interested in purchasing the property, the court will issue a tentative ruling.

The motion is granted to the extent set forth herein. The debtor owns personal property consisting of numerous pieces of farming equipment more particularly described in Exhibit A to the declaration of Gary Farrar ("the Property"). The chapter 7 trustee seeks to sell the Property to Richard Marcucci for $50,000.00 free and clear of "any and all liens and interests." The court can only authorize a sale free and clear of a lien or interest if the trustee establishes one or more of the bases set forth in 11 U.S.C. § 363(f) with respect to the lien or interest. Furthermore, the court cannot either statutorily or constitutionally authorize a sale free and clear of a lien or interest the holder of which did not receive sufficient notice of the sale to enable it to object. 11 U.S.C. § 363(b); In re Center Wholesale, Inc., 759 F.2d 1440, 1448-49 (9th Cir. 1985); In re Moberg Trucking, Inc., 112 B.R. 362 (9th Cir. BAP 1990).

The trustee seeks to sell free and clear of the security interest of U.S. Bank, N.A. in the approximate amount of $20,000.00. The bank has consented to the sale free and clear of its lien provided that its lien attaches to the proceeds or is paid through escrow. In addition, the sales price exceeds the value of the lien and the trustee intends to satisfy this lien from the proceeds of sale. The court finds that the trustee can sell free and clear of this lien under 11 U.S.C. §§ 363(f)(2) and (f)(3).

Pursuant to 11 U.S.C. § 363, the chapter 7 trustee is authorized to sell the Property to Richard Marcucci or an overbidder approved at the hearing free and clear of the liens and interests specified above, said liens and interests to attach to the proceeds of the sale. The proceeds of sale shall be administered as set forth in the motion.

The overbidding procedures proposed in the motion are approved. Any initial overbid must be in amount of $52,500 and any further bidding must be in increments of $500.

The motion does not request a finding under 11 U.S.C. § 363(m), and no such finding is made.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

33. 01-92886-A-11 MICHAEL HAT
WGC #1

CONT. HEARING ON MOTION FOR PAYMENT OF ADMINISTRATIVE CLAIM, AND TO COMPEL ASSUMPTION OR REJECTION OF EXECUTORY CONTRACT FILED BY FARM CREDIT LEASING
11/21/01 [361]

Tentative Ruling: None. Appearances required.

34. 01-92886-A-11 MICHAEL HAT
TVK #1

HEARING ON REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIM OF L & A PROCESS SYSTEMS, INC.
5/16/03 [1629]

Tentative Ruling: None. Appearances required.

35. 01-92886-A-11 MICHAEL HAT
LRP #2

HEARING ON MOTION FOR AN ORDER APPROVING TRUSTEE'S ABANDONMENT OF ESTATE PROPERTY
5/20/03 [1643]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

Pursuant to 11 U.S.C. § 554(a), the motion is granted, and the trustee is hereby authorized to abandon the Pond Vineyard, the Rampage Vineyard, the Coastal Vineyards, and the four vehicles listed in Exhibit A to the motion. The trustee has shown that the assets are burdensome or of inconsequential value and benefit to the estate.

Counsel for the chapter 11 trustee shall submit an order that conforms to the court's ruling.

36. 01-92886-A-11 MICHAEL HAT
FWP #11

HEARING ON MOTION OF FELDERSTEIN FITZGERALD WILLOUGHBY & PASCUZZI LLP FOR FIFTH INTERIM ALLOWANCE OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AS COMMITTEE COUNSEL
5/23/03 [1654]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

37. 01-92886-A-11 MICHAEL HAT
FWP #12

HEARING ON MOTION OF PACIFIC MANAGEMENT CONSULTING GROUP, LLC FOR FIFTH INTERIM ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES AS BUSINESS AND FINANCIAL CONSULTANT
5/23/03 [1659]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

38. 01-92889-A-11 GRAPECO, INC.
TVK #1

HEARING ON REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIM OF L & A PROCESS SYSTEMS, INC.
5/16/03 [723]

Disposition Without Oral Argument: This matter is continued by the court to July 22, 2003 at 9:30 a.m. Movant has failed to serve all proper parties with the motion. This is a contested matter under Bankruptcy Rule 9014 which requires service on parties against whom relief is sought and in the manner provided for service of a summons and complaint by Rule 7004. This is a chapter 11 case. The United States trustee filed notice of the amended appointment of an unsecured creditors committee on September 13, 2001 listing five committee members. Movant failed to properly serve three members of the committee: Movant omitted the suite number in Richard Calone's address; omitted the name of the responsible party (David O'Bryan) from IFCO ICS California, Inc., dba Pallex Containers Systems; and served American Tartaric Products, Inc., at a wholly incorrect address in Larchmont, NY instead of the address in Fresno, CA provided in the notice.

Movant shall re-serve the above members of the creditor's committee at the addresses specified in the September 13, 2001 notice. Movant shall provide notice of the continued hearing to all parties in interest utilizing the provisions of LBR 9014-1(f)(1). The notice provisions of

LBR 9014-1(f)(2) may not be utilized. LBR 1001-1(f).

The court will issue a minute order.

39. 02-94791-A-7 WILLIAM & DEBRA BENBOW — HEARING ON TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM NO. 7 OF PEOPLES BANK 5/5/03 [10]

Tentative Ruling: The chapter 7 trustee has filed this objection to claim pursuant to LBR 3007-1(d)(1) which requires it be filed and served forty-four days before hearing. The trustee filed and served the objection forty-three days before hearing. Therefore, pursuant to LBR 9014-1(l), the court deems the matter filed pursuant to LBR 3007-1(d)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

40. 00-92096-A-7 MICHAEL & SANDRA DUNCAN — HEARING ON VERIFIED MOTION BY MEEGAN, HANSCHU & KASSENBROCK FOR A FIRST AND FINAL ALLOWANCE OF COMPENSATION AS COUNSEL FOR TRUSTEE 5/20/03 [65]
MHK #5

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The application is approved for a total of $17,580.39 in fees and costs. On June 1, 2000, the debtor filed a chapter 7 petition. This court authorized the employment of counsel for the successor trustee on March 25, 2002 with an effective date of February 14, 2002. The trustee's attorney now seeks compensation for the period of February 14, 2002 to May 15, 2003, equaling $16,830.50 as fees, and $749.89 as costs.

As set forth in the attorney's application, these fees and costs are reasonable compensation for actual, necessary and beneficial services.

Applicant shall submit an order that conforms to the court's ruling.

41. 03-91734-A-7 VICKI L. HUTCHINGS — HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR TO PAY FILING FEE INSTALLMENT ($100.00 DUE MAY 23, 2003) 5/27/03 [8]

Tentative Ruling: This case is dismissed. On April 30, 2003, the debtor

filed a chapter 7 petition. The debtor paid $0.00 of the filling fees and contracted to pay the remainder of the filing fees in installments, according to the schedule set out below.

Schedule of Payments		Payments Made	
Date	Amount	Date	Amount
05/09/03	$50.00	LATE	$
05/23/03	$50.00	LATE	
06/06/03	$50.00	LATE	
06/20/03	$50.00		

The debtor has failed to make three filing fee installment payments. Failure to pay filing fee installments is cause to dismiss a case. 11 U.S.C. § 707(a)(2). No monetary sanctions are imposed.

The court will issue a minute order.

42. 03-91744-A-7 DANELLE LORRAINE PICOU

HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, OR IMPOSITION OF SANCTIONS FOR FAILURE OF THE DEBTOR TO PAY FILING FEE INSTALLMENT ($50.00 DUE MAY 23, 2003) 5/27/03 [7]

Tentative Ruling: On April 30, 2003, the debtor filed a chapter 7 petition. The debtor paid $0.00 of the filling fees and contracted to pay the remainder of the filing fees in installments, according to the schedule set out below.

Schedule of Payments		Payments Made	
Date	Amount	Date	Amount
05/23/03	$50.00	06/05/03	$100.00
05/30/03	$50.00		
06/13/03	$50.00		
06/20/03	$50.00		

This order to show cause is discharged and the case shall remain pending because the debtor has shown cause by paying the two missed payments on June 5, 2003. No monetary sanctions are imposed.

The court will issue a minute order.

43. 99-94168-A-7 JOHN L. MCANALLAN — HEARING ON THIRD AND FINAL APPLICATION OF WEINTRAUB GENSHLEA CHEDIAK SPROUL FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES AS COUNSEL FOR FORMER TRUSTEE, BRUCE EMARD 5/29/03 [65]
WGC #5

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

44. 00-91174-A-7 THE SHEPARD'S POUCH — CONT. HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF HAUSER & MOUZES 4/11/03 [490]
DMS #3

Disposition Without Oral Argument: This matter was withdrawn by the objecting creditor on June 16, 2003 and is removed from the calendar.

45. 03-91387-A-7 ARTURO & ERICA MELGAR — HEARING ON MOTION TO ABANDON REAL PROPERTY TO CORRECT TIME 5/21/03 [8]
FW #1

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.